

the retailer from the purchasing non-profit educational organization will be acceptable as prima facie evidence that the article is purchased for the exclusive use of such organization.

(g) *Exemption certificate not obtained prior to filing of retailer's excise tax return.* If the sale is otherwise exempt but the exemption certificate is not obtained prior to the time the retailer files a return covering taxes due for the period in which the sale was made, the retailer must include the tax on such sale in its return for that period. However, if the certificate is later obtained, a credit may be taken on a subsequent return or a claim for refund of the tax paid on such sale may be filed, within the period of limitation prescribed by section 6511(b) of the Code and § 301.6511(b)-1 of this chapter.

[T.D. 7536, 43 FR 13516, Mar. 31, 1978. Redesignated by T.D. 8066, 51 FR 14, Jan. 2, 1986]

§ 48.4041-18 Fuels containing alcohol.

(a) *In general*—(1) *Sale or use after December 31, 1984 and before January 1, 1993.* Under section 4041(k) the rate of tax applicable to the sale or use after December 31, 1984 and before January 1, 1993, of any liquid fuel described in section 4041(a) (1) or (2) which consists of at least 10% alcohol by volume is:

(i) 9 cents for each gallon of alcohol mixture sold or used in the case of mixtures described in section 4041(a)(1); or

(ii) 3 cents for each gallon of alcohol mixture sold or used in the case of mixtures described in section 4041(a)(2). The amount of tax is based upon the total volume of fuel and not merely upon the volume of the nonalcohol components of such fuel. However, see section 4041(b)(2) and § 48.4041-19 for rules relating to the complete exemption from taxes imposed by section 4041(a) where at least 85% of the fuel consists of alcohol produced from certain sources.

(2) *Sale or use after March 31, 1983, and before January 1, 1985.* For rules relating to the rate of tax imposed on the sale or use after March 31, 1983, and before January 1, 1985 of any liquid fuel described in section 4041(a) (1) or (2) which consists of at least 10% alcohol by volume, see section 4041(k) prior to the enactment of the Tax Reform Act of 1984 (Pub. L. 98-369, 98 Stat. 1007).

(3) *Sale or use before April 1, 1983.* No tax is imposed upon the sale or use of any liquid fuel described in section 4041(a)(1) or (a)(2) which consists of at least 10% alcohol if the sale or use occurs after December 31, 1978 and before April 1, 1983.

(4) *Rate of tax for mixtures which fail to qualify.* If an alcohol mixture fuel fails to qualify under this section, the entire mixture is taxed at the rate of tax specified under section 4041(a)(1) if the mixture contains diesel fuel, or section 4041(a)(2) if the mixture contains special motor fuel.

(b) *Alcohol mixture fuels qualifying for special tax treatment.* In order to qualify for the reduced rates of tax described in paragraphs (a)(1) and (a)(2) of this section or the exemption from tax described in paragraph (a)(3) of this section, at least 10% of an alcohol mixture fuel must consist of alcohol as defined in section 4081(c) and § 48.4081-2(a)(4) of the regulations. The actual gallonage of each component of the mixture (without adjustment for temperature) shall be used in determining whether the 10 percent alcohol requirement has been met. Further, in determining whether a particular mixture containing less than 10 percent alcohol satisfies this percentage requirement, the District Director shall take into account the existence of any facts and circumstances that establish that but for the commercial and operational realities of the blending process, it may reasonably be concluded that the mixture would have contained at least 10 percent alcohol. A circumstance from which it might be concluded that the mixture would have contained 10 percent alcohol but for its existence is malfunctioning of the meter measuring the amount of a component pumped into a mixture. However, the necessary facts and circumstances will not be found to exist if over a period of time the mixtures blended by a blender show a consistent pattern of failing to contain 10 percent alcohol. In no case will any mixture containing less than 9.802 percent alcohol qualify for the reduced rates set forth in this section. See paragraph (f) of this section for rules relating to information required to be attached to the taxpayer's return of the tax imposed by chapter 31 relating

to the alcohol content of the mixture for which tax is paid.

(c) *Later separation.* If a person separates out the alcohol from a mixture which has been taxed under the rates of section 4041(k), such separation will be treated as a sale of the liquid on the date separated and is subject to tax at the rates set forth under section 4041(a)(1) or (2). The tax liability incurred upon the separation is reduced by the amount of any tax previously imposed under section 4041. Thus, if Y buys 1000 gallons of alcohol mixture fuel taxed at the rate of 3 cents per gallon under section 4041(k) and later separates the fuel into 900 gallons of special motor fuel and 100 gallons of alcohol, the separation is treated as a sale of 900 gallons of special motor fuel, taxed at the rate of 9 cents per gallon under section 4041(a), and a sale of 100 gallons of alcohol, exempt from tax under section 4041(b)(2). The tax of \$81 on the deemed sale of special motor fuel is reduced by the tax of \$30 previously paid on the sale of the alcohol mixture fuel.

(d) *Exemption from tax for alcohol mixture fuels sold or used in an aircraft in noncommercial aviation—(1) In general.* No tax is imposed upon the sale or use of any liquid fuel described in section 4041 (a)(1) or (a)(2) which consists of at least 10% alcohol if such fuel is sold to or used by an owner, lessee or other operator of an aircraft as fuel in such aircraft in noncommercial aviation. See section 4041(c)(4) and the regulations thereunder for the definition of non-commercial aviation.

(2) *Failure to use alcohol mixture fuel in an aircraft in noncommercial aviation.* If fuel which is exempt from tax under paragraph (d)(1) of this section is not used as fuel in an aircraft in non-commercial aviation, any other use or sale of such fuel will be considered the use or sale of an alcohol mixture fuel subject to tax according to the rules of this section.

(e) *Refunds relating to diesel, special motor and noncommercial aviation fuels.* See section 6427 for rules which relate to the allowance of a refund or credit to a person who uses tax-paid diesel, special motor or noncommercial aviation fuels to produce an alcohol mixture fuel.

(f) *Records required to be furnished by the taxpayer.* A taxpayer making a return of the tax imposed by chapter 31 indicating payment of the tax under section 4041(k) and § 48.4041-18 at the reduced rate must attach a statement to the return indicating the total number of gallons of alcohol mixture fuels containing at least 10 percent alcohol and the total number of gallons of alcohol mixture fuels containing less than 10 percent alcohol but more than 9.802 percent alcohol. However, the taxpayer does not have to specify the precise mixture ratio for every mixture blended for which tax is being paid. For example, the taxpayer pays tax for 10,000 gallons of alcohol mixture fuels. Of these mixtures, 1,000 gallons contain 9.9 percent alcohol, 1,500 gallons contain 9.91 percent alcohol and 7,500 gallons contain 10 percent alcohol. The taxpayer seeks to have all of the mixtures described above qualify for taxation at the reduced rate under the rules of paragraph (b) of this section. The blender must attach a statement to the return of tax filed for these mixtures indicating that of the 10,000 gallons, 7,500 gallons contain at least 10 percent alcohol and 2,500 gallons contain less than 10 percent alcohol.

(g) *Alcohol mixture fuel within the tank of a vehicle—(1) Mixtures within the tank of a vehicle before April 1, 1983.* If an alcohol mixture fuel is put into the tank of a vehicle prior to April 1, 1983, the fuel is considered used prior to that date. Thus, such fuel will not be subject to the tax described in paragraph (a)(2) of this section and will be exempt from tax according to the provision of paragraph (a)(3) of this section.

(2) *Mixture within the tank of a vehicle before January 1, 1985.* If an alcohol mixture is put into the tank of a vehicle prior to January 1, 1985, the fuel is considered used prior to that date. Thus, such fuel is subject to the tax described in paragraph (a)(2) of this section.

[T.D. 8152, 52 FR 31616, Aug. 21, 1987]

§ 48.4041-19 Exemption for qualified methanol and ethanol fuel.

(a) *In general.* Under section 4041(b)(2), the tax imposed upon the sale or use of motor fuels under section 4041(a) does not apply to the sale or use of qualified methanol or ethanol fuel.